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Refugee Reports

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MEXICO DEPORTS 80,000 IN FIRST SIX MONTHS OF 1990
NEW LAW RECOGNIZES "REFUGEES,"
BUT WILL IT PROTECT CENTRAL AMERICANS?

[This article, written by Refugee Reports co-editor Bill Frelick, is based on a site visit to Mexico in August. Frelick, representing the U.S. Committee for Refugees (USCR), visited sites along Mexico's northern and southern borders, as well as Mexico City. He interviewed refugees, Mexican, Guatemalan, Nicaraguan, and U.S. government officials, nongovernmental agency personnel, and UNHCR officers. He was accompanied for parts of the trip by Sara Martinez of the Santa Chirino Amaya Refugee Committee in Los Angeles and Arturo Solis of the Center for Information and Migration Studies in Reynosa, Tamaulipas. Refugee Reports subscribers will soon receive a full USCR report of the site visit.]

Although Mexico just introduced the term "refugee" for the first time into its law code, legally recognizing as refugees people displaced by war, it is also now escalating its efforts to apprehend and deport people crossing into Mexico from war-torn Central America. This newest mixed signal of law and practice suggests either that Mexico is on the verge of a breakthrough that could herald a more generous response to Central Americans fleeing violence, or that the gap between rhetoric and reality is about to widen still further.

The increase in deportations as well as heightened legal recognition of refugee rights can both be traced to the inauguration of a new president, Carlos Salinas de Gortari, in 1989. That year also brought increased attention by the U.S. Immigration and Naturalization Service (INS) to Central American migration in Mexico (see box, p.4). In the first year of the Salinas Administration, the number of deportations jumped 500 percent from the previous year, and could double again from 1989 to 1990:

YEAR	APPREHENSIONS AND DEPORTATIONS
1988	14,000
1989	85,000
1990 (first six months)	80,000

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A U.S. government official in Mexico projects that 160,000 Central Americans will be deported from Mexico by the end of 1990. By contrast, 12,133 Central Americans were deported from the United States in FY 89.

Statistics, however, only tell one part of the story. The deportations are taking place in the absence of any meaningful mechanisms for determining refugee status, as illustrated by the absence of any distinction between apprehensions and deportations in the statistics cited above. There is no administrative or judicial hearing prior to deportation in which a person faced with deportation has an opportunity to claim asylum. In a very few cases, the UN High Commissioner for Refugees (UNHCR) representative in Mexico has intervened, but, for the most part, such interventions have taken place on behalf of persons who had not yet been apprehended and detained.

For nearly everyone apprehended, the result means being taken to the border and dumped into Guatemala. This happens for Salvadorans, Nicaraguans, and Hondurans, as well as Guatemalans. Those who are apprehended in the north or central portions of Mexico are jailed until a bus arrives to carry them to the Guatemalan border. Sometimes they are detained again in Mexico City or Tapachula (in the southernmost state of Chiapas) until the buses can be filled.

The UNHCR protection officer in Chiapas told us that the *Servicios Migratorios* authorities had only called him twice in the past year to assess asylum claims in Tapachula (the final staging point for nearly all of the deportations).

Conditions of Detention We visited a group of Salvadorans and Nicaraguans in the municipal jail in Tijuana who had been held in that facility for 10 days awaiting transport (despite *Servicios Migratorios* officials' assurances to us that no one is held longer than 36 hours). They expressed fear about being detained with Mexican criminals and anxiety about not having been informed by the authorities about their situation.

One of the detainees, a 16-year-old Nicaraguan girl, fell ill shortly after being imprisoned. After three days of abdominal pain, "Teresa" was sent to the local hospital, where she had a miscarriage. After two days there, she was returned to the jail. Teresa was still visibly pale and weak at the time of our visit. She told us that she could not eat the food (one meal a day of beans with hot chile peppers), and that the jailers would not give her milk or pills for pain.

Conditions of detention vary from place to place. Following protests by Mexican groups about jail conditions in both Matamoros (just across the border from Brownsville, Texas) and Mexico City, "migration stations" have been established exclusively to hold aliens pending deportation. Information about these facilities is hard to come by, however, and the authorities have resisted efforts by nongovernmental bodies (including Refugee Reports) to visit them. Since those who are held in these facilities are deported, it is difficult to interview former detainees. When we did locate a Salvadoran who had been detained at the migration station in Mexico City, he refused to talk about it, saying only that conditions were "not ideal." Since he either had returned to Mexico after having been deported or had somehow escaped from the migration station, his fear was understandable.

Abuse and Terror on the Journey North We interviewed other Central Americans who describe a situation that is highly arbi-

"Teresa" in the municipal jail in Tijuana. Her brother, a Nicaraguan, is to her left; a Salvadoran to her right. USCR/B. Frelick

trary, tainted by corruption, and in which the threat (or reality) of violence is never far away.

"Rosa," who fled from El Salvador on January 6 of this year, told us of having been caught near Tapachula by Mexican authorities in civilian clothes [the federal judicial police operate in plainclothes]. The women in her group were separated from the men, stripped, beaten, and raped. At that point, Rosa said her captors saw wounds on her legs, decided she must have been an FMLN (Farabundo Marti National Liberation Front) guerrilla, and turned her over directly to Guatemalan military officers. Rosa admitted to them that she had been wounded in the FMLN's November offensive and asked if they were going to kill her. A Guatemalan officer told Rosa he would spare her life because she showed courage. She fled again to Mexico.

Some from the other side of the Salvadoran civil war have fled as well. We interviewed "Carlos," a young soldier who had been in Mexico only 25 days. A member of the Fourth Brigade in El Paraiso, Chalatenango, Carlos deserted after he was ordered to "take" a man who had been denounced as a guerrilla. But this was a man whom Carlos had known for many years, and he didn't believe that he was a guerrilla. Carlos told his friend about the order to pick him up, then shed his uniform, threw his gun in the river, and fled the country, leaving behind his wife and baby. Carlos entered Mexico with two other army deserters. Uniformed Mexican authorities in Chiapas found them and caught the other two, but Carlos fled into the woods. The last Carlos saw of his companions, they were tied by the thumbs with their hands behind their backs suspended by a pole through the back of their arms.

Carlos walked the rest of the way to Queretaro, northwest of Mexico City, where we interviewed him. Although he eluded the Mexican authorities, he had no such luck with criminals preying on the undocumented. Carlos was assaulted and robbed in Chiapas, losing his money and rings.

Noncombatants fleeing the war in El Salvador fare no better in seeking asylum in Mexico. We interviewed "Ana," a Red Cross worker in Mexico City who had not been a combatant in the November offensive, but who was nevertheless denounced by an

After being raped, "Rosa" was turned over to the Guatemalan army. USCR/B. Frelick

anonymous source to the army. Ana and her husband fled the country on April 12 and spent three days crossing Guatemala. After paying someone 150,000 pesos (about $54) to take her across the Suchiate River marking the Mexican border with Guatemala, Ana was caught near Tapachula while trying to board a train. Men wearing dark blue uniform pants [the kind worn by the municipal police] drove Ana and her husband around Tapachula in a truck without a license plate until they paid a bribe and were released. She then decided to walk north along the train tracks as a way of avoiding arrest.

Ana told us she only got as far as Huixtla, about 30 kilometers north of Tapachula, when a group of men with machetes raped her and robbed and severely beat both her and her husband. A Mexican family found them and took them to the hospital, where, posing as Mexicans, they spent 15 days recovering from their wounds. After their release, the Mexican family took them in and sheltered them for another week before putting them on a train to Tierra Blanca in Veracruz.

In the middle of the night, the train stopped. Men, whom Ana called "narcotics police," boarded the train, supposedly

(continued on page 6)

OPERATION HOLD THE LINE: U.S. IMMIGRATION SERVICE INVOLVEMENT IN MEXICO

Stepped up enforcement by the U.S. Immigration and Naturalization Service (INS) along the border with Mexico in early 1989 coincided with the start of the Salinas Presidency. In February 1989, the INS announced "Operation Hold the Line," boosted the U.S. Border Patrol presence along the Mexican border, put into effect expedited asylum proceedings, and ordered detention and quick deportation of those denied asylum (see Refugee Reports, Vol. X, Nos. 1, 2, 3, and 5). At that time, the INS also became more actively involved with Mexican authorities, particularly its counterpart, **Servicios Migratorios**. An internal memo setting forth the INS plan as early as December 1988 listed its components:

° Press State Department and use INS liaison to secure the assistance of Mexico and Central American countries to slow down the flow of illegal aliens into the United States.
° Enhance Anti-Smuggling presence and use of informants to develop additional information on organized trips.
° Request State Department to determine ways in which the Mexican and Central American Governments can assist efforts to ascertain scope of Central American migration to the United States.

An internal INS report, dated February 16, 1989, entitled "Enhancement Plan for the Southern Border," gave detailed instructions on how the effort would be carried out. The memo stated that:

° two Intelligence Officers, two Border Patrol Agents, two Anti-Smuggling Agents, and an Immigration Officer from Mexico City District Office will be detailed to Guatemala before the public announcement of Operation Hold the Line. These detailees will be sent to Guatemala City and Tecum Uman, Guatemala, which is the major crossing point from Guatemala to Mexico. This detail to a foreign territory will be cleared through the Department of State. To augment this detail, INS Officers duty-posted to Mexico City and a team of three officers detailed to Monterrey will also provide information on smuggling patterns and alien movement through their areas of jurisdiction....
The intelligence gathering teams in Guatemala, Mexico City, and Monterrey will continue to provide predictive intelligence to ensure that the Border Patrol's mobile corridor and Anti-Smuggling resources are properly deployed so as to be most effective.... Additionally, the INS District Office in Mexico City will continue liaison already established with the new director of Mexican Immigration to address the issue of third country nationals transiting Mexico en route to the U.S.

° The INS Intelligence Program will continue on-going liaison with other government agencies, particularly the CIA, DIA, Department of State to monitor changes in those conditions in source countries which most heavily impact on emigration.... The information provided by these agencies will be analyzed in conjunction with statements provided by aliens during debriefings.

By late February, the operation was in full swing. Memoranda to the INS Central Office from E. Michael Trominski, the INS district director for Mexico City, give detailed intelligence on movements of undocumented aliens in Mexico. The following excerpts show the extensive INS involvement in Mexico, as well as the high level of cooperation with Mexican Immigration Services:

° _____ reported at 0730 this AM from Veracruz, Veracruz. He met last night with the Mexican Immigration Regional Delegate, who he reported as 110% effective at his job.... He is aware of the purpose of this project and has promised to cooperate.
_____ further reported that no major loads were observed en route. At the Veracruz bus station no large groups were encountered, but a number of family size groups, apparent Central Americans, were seen being escorted by apparent police or security guards.

° _____ arrived in Brownsville yesterday PM to receive a briefing from ASU [Anti-Smuggling Unit]; he was then

to proceed to Matamoros to conduct activities. Separately, _____ reported that he was contacting two informants, to be sent to Tapachula, Chiapas, to meet with _____ for information gathering in Guatemala. Both informants are still active in alien smuggling, and are very knowledgeable about the overall activity.

° _____ advised this office of Mexican Immigration's arrest in Monterrey of an Uruguayan believed to be a permanent resident, who smuggles Colombians, Guatemalans, and Nicaraguans. _____ will interview at Mexican Immigration detention today.

° Contacts have been made at the bus stations in Matias Romero, Acayucan, Veracruz, and Arriaga, to provide further information on flows. The word is out that a Mexican Immigration inspector is travelling the area busting loads.

_____ will arrive in Tapachula tonight. _____ will work the bus station and airport, and wait for _____'s arrival to make contact with Mexican immigration.

° _____ will also interview two Pakistanis arrested at the Mexico City Airport with false NIVs [Nonimmigrant visas], as well a Honduran arrested escorting four Chinese. The Honduran at first claimed to be a native of Belize, naturalized in the U.S., but our records check disproved this. It is probable that all three may tie in to ongoing ASU investigations.

° _____ reported making contact with Mexican Immigration subdelegado Tuesday night with ASU_____. The subdelegado was very cooperative; a dinner was held last night with all Mexican Immigration personnel. All the small hotels in Matamoros were visited, about 16, and all are overflowing with Central Americans registered as Mexicans. _____ was approached yesterday on the streets 4 times by smugglers offering their services. While working the Mexican side of the river, _____ was invited to join a load of 30 by a smuggler. The bus depot is being worked by Mexican Customs and other agencies, all on the take. The bribe situation has caused the smugglers to off-load groups outside of Matamoros and to get them downtown by other means, avoiding the bus station.

° _____ reported last night from Tampico. He had an extensive meeting yesterday with the Mexican Immigration subdelegado in Tuxpan.... Cooperation is good with the Mexican Federal Judicial Police, but not with state or local authorities.

INS District Director Trominski spoke about the continuing involvement of the INS in Mexico, when we met with him in Mexico City. He said that the INS is involved in training its Mexican counterparts in detecting fraudulent documents. The interchange of information works both ways, according to Trominski, with Mexican Immigration providing the INS with information on alien smuggling operations. "Cooperation on immigration enforcement is expanding," said Trominski. "Mexican Immigration is vigorous in its enforcement of the law."

Trominski, who also serves as regional immigration attache for Latin America, observed that cooperation has improved at the higher levels of government, as well. A working group of the U.S.-Mexico bi-national commission has been established to deal with migration issues. Discussions thus far have focused on many of the sensitive problems arising from the migration of Mexican nationals, including detention of material witnesses, temporary agricultural worker visas, and at the top of the agenda, reducing border violence.

Trominski generally does not view Central Americans as refugees. "We have interviewed refugee applicants in Central America [for admission to the U.S. as refugees]. They don't fit into the program. It's hard to get a good solid claim." Trominski said that most approvals for U.S. refugee admission in the last four years have been for Nicaraguans, but he predicted that fewer would be approved since the elections. Of Salvadorans, Trominski commented, "We won't let FMLN types into the United States as refugees." He sees the Central American flow as economic. "Sending people home generally is not a bad thing to do," he said.

"Carlos" saw Mexican authorities bind his companions by the thumbs. USCR/B. Frelick

searching for drugs [federal judicial police are responsible for narcotics enforcement and would have had authority to stop a train]. They robbed the Central Americans on board of their watches and money and took about 50 of them off the train. Ana saw one man being hit in the genitals and another whose head was broken open. Ana and her husband were not arrested at that time, however, and managed to arrive in Mexico City sometime in May. Their troubles did not end there, however.

After several weeks on a job that did not require work papers, Ana's husband was arrested along with a Mexican and a Honduran co-worker as they walked down the street. They were held for three days in a clandestine jail run by the federal judicial police, where they were accused of being involved with drugs. There was no evidence of that, but the federal judicial police discovered that the Central Americans were undocumented. They accused the Mexican of being a *pollero*, a smuggler, and demanded a bribe of 6 million pesos (about $2,150) from his family for his release. They turned Ana's husband over to *Servicios Migratorios*. Ana hadn't heard from him since his arrest. [If sent to the Mexico City migration station, it is almost certain he has been deported.]

Although we asked high government officials to allow us to visit the migration station where Ana's husband would have been taken, permission was not granted.

New Refugee Law Although Mexico has still not acceded to the 1951 UN Convention and 1967 Protocol on refugees, it did on July 17, 1990 enact amendments to its "General Population Law" that incorporate a broad defintion of "refugee" along the lines of Central America's Cartegena Declaration, a definition which would include a larger set of forced migrants than that comprised by Convention Refugees fleeing persecution or a well-founded fear of persecution. According to Article 42, VI of the law, "refugees" are defined as persons who:

> have been threatened by general violence, foreign aggression, internal conflicts, massive human rights violations, or other circumstances that have greatly upset public order in their nation of origin.

The new law would appear to be a remarkable advance. It has leapfrogged over the UN Convention definition that rests on the notion of individualized persecution (the

Her husband probably deported, "Ana" now tries to manage on her own in Mexico City USCR/B. Frelick

operative definition in U.S. refugee law as well). Instead, it has embraced a definition more akin to that which operates in Africa, where victims displaced from their homelands by generalized violence, including internal conflicts, are accepted--and protected--en masse as refugees.

Combined with recent proclamations by President Salinas against corruption and orders to scale back federal judicial police roadblocks in the south, the new law opens the possibility that refugees fleeing civil war in Central America may find protection in Mexico.

As yet, however, regulations have not been promulgated that will spell out how the changes in law will be implemented. At the time of our visit, there was a great deal of speculation as to the effect of the new law on future determinations of refugee status, but no one inside or outside of government claimed to have any knowledge of what the mechanism would look like.

Fear and Suspicion Remain Among the undocumented Central Americans in Mexico City whom we interviewed, most were unaware of the new law. "Those who talk about it are the organizations that work with refugees, not the refugees themselves," said one Salvadoran. But what little has trickled down has, in some cases, been tinged with the fear of discovery.

"The new law can't help refugees now," said one. "You will need to pay money and go to jail if you open your house and have a refugee there."

The emphasis given the changes in the law by at least portions of the Mexican press has been on harsher penalties for those who harbor and assist undocumented aliens, not on the new refugee definition. In Chiapas, the day following the publication of the new law in the Official Daily, the front page headline of Noticias de Chiapas, the local paper, shouted, "They Will Punish Traffickers of Illegals." The accompanying article made no mention of a new refugee definition, of protection against forced return of refugees, nor any of the other humanitarian provisions of the new law. Exclusive attention was paid to Article 118--quoted in full--that imposes ten year prison sentences and the equivalent of 10,000 days of the Mexico City minimum wage on:

> "those who by one means or another, without legal permission from a competent authority, intend to bring, or bring illegally one or more foreigners to Mexico or another country, or house them, or transport them through national territory with the purpose of hiding them from migratory inspection."

While some papers were sending this message to the public, certain delegates of *Servicios Migratorios* were sending the same message to nongovernmental organizations (NGOs) that assist undocumented Central Americans. The local delegate of *Servicios Migratorios* sent a copy of the new law with Article 118 underlined to one of the nonprofit agencies in Chiapas assisting Central Americans.

Some of the humanitarian organizations are frankly worried about the impact of the new law on their ability to assist and protect Central Americans. These groups are skeptical that this provision of the law will be used against the *polleros*, since it does not specifically address those who harbor or transport undocumented aliens for profit.

As one Mexican NGO representative said, "Everybody knows who the *polleros* are, that is their work. [Article 118] is more likely to be used against the NGOs. In [his town], the *polleros* pay the federal judicial police a monthly payoff. In [the next town], the *Servicios Migratorios* delegate has his own gang of *polleros*."

In our travels along both the southern and northern borders it was not at all difficult to identify the *polleros*. When we crossed the Suchiate River by raft, following the most common route taken for the crossing of undocumented Central Americans into Mexico, the man who took us across spoke quite matter-of-factly about the payoffs he made to the authorities standing just off the river bank, allowing him to continue his profitable trade.

The real impact of the new law will depend on how the *Servicios Migratorios* agents on the Suchiate river bank understand it; if it causes nonprofit groups or individual families to fear coming to the assistance of needy strangers; whether or not asylum seekers themselves feel they can come forward and receive protection rather than further risks to their lives.

Recent Developments

FIRST WAVE OF DISPLACED PERSONS IN THE MIDDLE EAST IS GOING HOME; NEXT WAVE COULD FACE NEW PROBLEMS

Since Saddam Hussein invaded and annexed Kuwait on August 2, more than 800,000 Arabs and Asians have left, or found themselves stranded outside of, Iraq and Kuwait. They include about 240,000 Kuwaiti refugees in Saudi Arabia and other Gulf states, and around 500,000 Saudis, Egyptians, Jordanians, Yemenis, and Syrians who have returned home. But it has been the 150,000 South and Southeast Asians who have found the way home to be especially long and precarious.

Having lost their possessions and negotiated an arduous 1,000-mile overland trip from Baghdad, many of the Asian nationals--from Bangladesh, India, Pakistan, Sri Lanka, Thailand, and the Philippines--found themselves trapped in a barren and inhospitable no-man's land along the Jordanian-Iraqi border. By early September, an estimated 105,000 people, mostly Asians, were "hostages of the desert," as one relief official put it.

Temperatures in the makeshift camps could reach 120 degrees during the day and drop to near freezing at night. As of September 7, one month after the exodus began, 40 percent of the people in Shaalan One, the largest border camp, still had no shelter, according to the UN Disaster Relief Organization (UNDRO). Blankets, food, medicine, and water were all listed as "urgent needs" in an UNDRO situation report.

But equally important to the task of meeting immediate survival needs of the evacuees, relief officials agreed, was getting them out of the desert and back to their homelands. On September 6, the International Organization for Migration (IOM), issued an appeal for $60 million "to handle the initial exodus of 100,000-200,000 people." The first stage of the repatriation effort, according to an IOM statement, "is to transport the two largest Asian groups stranded in Amman--40,000 Bangladeshis and 5,000 Sri Lankans. The governments of Sri Lanka and Bangladesh have no resources to finance the repatriation of such large groups."

The worldwide response to the relief and repatriation effort has generated more than $245 million in contributions, including $28 million from the United States. Most of the people in the Jordanian border camps have been moved to more hospitable facilities in Azraq. More than $45 million in cash and $8 million in aircraft has been pledged to IOM, and more than 52,000 people were flown out of Jordan by the end of September.

Relief officials say that the situation in Jordan and Turkey, which has seen an influx of about 40,000 displaced persons, is no longer life-threatening. Movements out of Iraq and Kuwait appear to have slowed in recent days. But the deluge, they say, could resume at any moment. There are credible reports that at least 400,000 Egyptians and Asians have been displaced from their homes and jobs, and are poised to cross into Jordan and Turkey. With repatriation costs averaging between $500 and $700 per person, additional needs could run in the hundreds of millions of dollars.

Repatriation, however, may not be an option for an increasing number of people fleeing Iraq and Kuwait. Kuwaiti and Iraqi nationals are the obvious examples. But there are others. The UN High Commissioner for Refugees (UNHCR) notes that persons from refugee-producing countries (including Sri Lanka, Vietnam, China, Romania, and Sudan) who have been working in the Gulf region now may be unemployed but unwilling to return home due to a well-founded fear of persecution. In addition, UNHCR reports, there are "an undetermined number of recognized refugees who left first-asylum countries to work in the Gulf region and now will be obliged to return to these countries of first asylum, often to refugee camps where they cannot work and will require assistance." Two examples UNHCR gave were Ethiopians and Somalis.

<u>Displaced Persons and Others at Risk Inside Iraq and Kuwait</u> In addition to the 400,000 displaced Egyptians and Asians, there are many other groups inside Iraq and Kuwait who are finding their situation increasingly desperate. These include an estimated 2 million foreign nationals and 600,000 Kuwaiti citizens.

About 6,000 Westerners, including 1,000 Americans, are either being held hostage by

Even though the evolving famine in Sudan is at an early stage, many of the southern Sudanese refugee children arriving now in Ethiopia already show signs of acute malnutrition. USCR/R. Winter

the Iraqis or are evading capture. Iraqi leader Saddam Hussein has begun to deny food rations to foreign nationals--he has particularly singled out Asians--and insisted that their own governments must feed them.

Kuwaiti refugees fleeing into Saudi Arabia tell of Iraqi soldiers searching house to house for foreign nationals and suspected Kuwaiti resisters. Houses have been confiscated or destroyed, and some people have been executed in the streets. "The people are frightened. There is shooting and killings," one refugee told the New York Times. "The Iraqis are killing Kuwait. They are killing our country."

WIDESPREAD FAMINE THREATENING SUDAN LARGELY IGNORED; OPERATION LIFELINE II COLLAPSING

According to a U.S State Department Famine Early Warning System (FEWS) report, widespread drought in Sudan's major food-growing areas could lead to a "major, nationwide food shortage of 1984 proportions." More than 150,000 Sudanese starved in 1984 because of drought. Another 250,000 died in 1988 as a result of drought and civil war.

Despite the early warning, there has been relatively little international attention or response to the evolving famine in Sudan. According to the U.S. Committee for Refugees (USCR) director Roger Winter, who has recently returned form visiting Sudanese refugee camps in western Ethiopia, the lack of international response so far is not new or surprising. "In both 1984 and 1988, early warning of an impending catastrophe was ignored. This time there can be no excuse. The warning comes from the U.S. government itself. The international community must act now to save lives."

The FEWS report added, "The ability of people to cope is being overwhelmed.... Reports are now coming in of substantial and abnormal movements of population from their homes."

Addressing the House of Representatives on September 21, Congressman Frank Wolf [Dem. VA] said, "'Famine of 1984 proportions.' 'Ability to cope overwhelmed.' These are code words, Mr. Speaker, and they mean that hundreds of thousands of people may die. And no one seems to be paying attention."

Winter said that even now, when the famine in Sudan is at an early stage, Sudanese refugees arriving in Ethiopia show signs of acute malnutrition. "Many of the children I saw in the refugee camps in Ethiopia are no more than skin and bones," Winter said. "It is hard to imagine what conditions will be like when the worst of the famine strikes."

The current drought comes on top of already existing problems associated with getting aid to the more than 4.5 million southern Sudanese who have been displaced by the war (see Resources). In 1989, Operation Lifeline Sudan (OLS I), a UN-coordinated relief effort to get aid to displaced southerners in both government-held areas and in areas controlled by the Sudan People's Liberation Army (SPLA), helped prevent a repetition of the 1988 tragedy in Sudan. However, this year's effort to aid the displaced, OLS II, has met with substantially less international support than OLS I and is on the verge of collapse. According to Winter, "that may be in part because OLS appears to have abandoned humanitarian neutrality to accommodate the Sudanese government's concerns, while largely ignoring those of the SPLA." Without a functioning Lifeline Sudan, responding to the needs of famine victims throughout Sudan, including the displaced, will be doubly difficult.

COURT UPHOLDS INS DETENTION OF CHILDREN

On September 7, a federal court panel let stand its decision allowing the Immigration and Naturalization Service (INS) to detain unaccompanied children until a relative comes forward to claim them.

The controversy arose in 1984 when then-INS Western Regional Director Harold Ezell announced, "No minor shall be released except to a parent or legal guardian." Critics charged that the Western Regior's policy used children as "bait" to force undocumented parents to turn themselves in (see Refugee Reports, Vol. VIII, No. 11). In 1985, a lawsuit, Flores v. Meese, challenged the release policy, as well as the conditions in which the INS held children in detention.

That litigation, along with public pressure, helped give rise to new federal regulations, published on May 17, 1988, setting forth INS criteria for the release of minors in INS detention. The regulations said that juveniles should be released, in descending order of preference, to:

1) parents, legal guardians, and adult relatives not in INS detention;
2) those relatives, in INS detention, who could then be released on a case-by-case basis together with the child;
3) a responsible person designated by the parent or legal guardian, when the parent or legal guardian is himself or herself in INS detention; or
4) in "unusual and compelling circumstances," under the discretion of the INS district director or chief patrol agent, other adults who execute an agreement to care for the juvenile's well-being and to ensure that the child appears in future proceedings.

At about the same time, March 7, 1988, Judge Robert J. Kelleher of the Central District Court of California issued an injunction supporting the claim of the Flores plaintiffs that the INS's limited release policy had violated the children's Fifth Amendment due process rights.

A sharply split panel of the Ninth Circuit Court of Appeals on June 20, 1990 reversed the district court injunction. Writing for the majority, Judge J. Clifford Wallace said, "Even if the INS's policy may not be the best possible policy, we are bound to uphold it if it has a rational basis. All we conclude is that it has."

In dissent, Judge Betty B. Fletcher wrote, "The facts of this case are among the most disturbing I have confronted in my years on the court. Children are being held in detention by the INS for as long as two years in highly inappropriate conditions out of a professed concern for their welfare."

Ian Fan, the U.S. attorney on the case, told Refugee Reports, "We vigorously dispute Judge Fletcher's contention that minors are detained for as long as two years." He said that his office has canvassed INS detention centers, and found "the average length of detention for minors is 30 to 60 days."

Fan noted that Judge Fletcher did not say that the regulations violated the Immigration and Nationality Act. Therefore, he said, "All you need to do is justify that the government position has a rational

basis."

Peter Schey, executive director of the Center for Human Rights and Constitional Law, which represents the plaintiffs in the Flores v. Meese suit, said that the Ninth Circuit panel ruling raises the question, "Is the INS going to follow a highly restrictive policy resulting in unnecessary indefinite detention of minors, or will it be required to follow the same standards applied by all other state and federal agencies to release minors to responsible adults who are able and willing to care for them?"

A motion for a rehearing before the entire Ninth Circuit is pending.

IMMIGRATION JUDGE BARS SALVADORAN DEPORTATION BASED ON CIVIL WAR CONDITIONS

U.S. refugee law has long been predicated on the notion that asylum is strictly related to fear of persecution, and that fear of harm based on generalized violence or warfare does not meet the legal requirements for refugee protection.

But a recent decision by an immigration judge in Arlington, Virginia, to bar the deportation to El Salvador of a family fleeing that country's civil war skirts the pitfalls of refugee law by appealing instead to the principles of international humanitarian law.

In Matter of Santos, Judge Paul A. Nejelski found support in customary international law for "the right to flee flying bullets," so that persons threatened by a country at war should not be forced back. He noted that "throughout history, the principle of necessity has historically justified cross-border migrations by war refugees, justifying noncompliance with ordinary restrictions on movements of persons." Nejelski made an analogy to common law in this country that a person fleeing a burning building can cross a nearby property line and not be considered to have trespassed.

At the same time that he found protection from refoulement existing in humanitarian law, Nejelski was careful to say that the Santos family had not met the legal criteria for asylum in U.S. law. "Applying the facts of this case to the law of asylum...," he wrote, "I must deny the applications. Respondents' plight is lamentable, but there is no showing that the respondents have been singled out because of one of the five grounds required by the statute, such as their political belief. The unpunished murder of Gomez [the husband and father of the family], the rape and murder of the respondent's nieces, the other horrors described are the unfortunate result of the civil war and under BIA [Board of Immigration Appeals] precedent do not result in a grant of asylum or withholding of deportation."

According to the judge's ruling, the Santos family could be deported to a third country not at war, if one could be found that would be willing to accept them.

In an earlier decision, Matter of Medina, the BIA ruled that the definition of refugee in the Geneva Convention only relates to refugees of international, and not civil, wars. It also ruled that customary international law that has evolved out of the Fourth Geneva Convention had not broadened to include displaced persons as refugees within the 1951 Refugee Convention and its 1967 Protocol.

Nejelski argues that in this instance "the right of nonreturn does not derive from the Geneva agreements, but from humanitarian law generally."

Expedited Appeal The Immigration and Naturalization Service (INS) has appealed the decision and asked the BIA for expedited consideration of its appeal, saying that Judge Nejelski's ruling was "clearly erroneous under Matter of Medina" and that the ruling "potentially impacts on thousands of asylum claims from applicants from a host of countries in which there is civil strife."

This is not the first time the INS has asked the BIA for expedited appeals of Judge Nejelski's decisions.

In filing an appeal of an earlier decision this year in which he granted asylum to a 19-year-old Salvadoran, the INS charged that "Judge Nejelski has settled into a pattern or practice...of rendering erroneous decisions..., thereby contributing...to a significant monthly-average increase in granted asylum cases for the two full-time sitting immigration judges in this district." To support its position in that call for expedited consideration of appeal, the INS cited 14 other proceedings, most of which involved Salvadoran asylum claims, to

show Nejelski's "recurring errors of law and disregard for BIA decisions."

The BIA denied the motion to expedite saying that "scorecard analysis of [an immigration] judge's decisions is irrelevant and inappropriate." It further noted that the 14 other cases raised by the INS "do not provide in themselves a basis for any conclusion regarding 'recurrent errors of law'" and criticized the Service for "entwining unrelated, unconsolidated appeals."

In the Santos case, Nejelski apparently foresaw that the INS might again want expedited consideration, and so ordered that transcription should be expedited in order to receive the earliest decision from the BIA.

While the the Santos's attorney, William Van Wyke, is not challenging the motion for expedited consideration, he does take issue with the grounds for doing so put forward by the INS.

Van Wyke said that the assertion of error by the immigration judge is the basis for all appeals, and doesn't, in itself, justify expedited consideration. Further, Wyke argued, because the INS rarely deports people to other civil war situations, such as Ethiopia, Lebanon, Afghanistan, and Liberia, the decision, in reality, only has a broad impact on Salvadorans, who, he said, are deported to their homeland much more often than any other nationality experiencing civil war.

In an interesting twist, Dawn Martin, the attorney representing the Salvadoran in the case that the INS earlier failed to have considered on an expedited basis, told Refugee Reports that she is now considering raising the nonrefoulement defense on her client's behalf if that case is remanded on appeal.

MIAMI JUDGE BLASTS DISCRIMINATORY TREATMENT OF HAITIANS

Federal Judge Eugene Spellman ruled on July 16 that a Miami immigration judge failed to advise a Haitian asylum seeker of his rights and ordered a new hearing.

In doing so, he drew broader conclusions about what he observed as a double standard with respect to Haitians. The "INS has routinely engaged in underhanded tactics in dealing with Haitians seeking asylum in this country, and has singled them out for special discriminatory treatment," he said. "Repeatedly, this Court and other federal courts have found that INS has engaged in illegal practices and policies with respect to Haitians."

The case involved a Haitian teenager, Noel Molaire, who stated in his appeal that his brother had been jailed, and possibly killed, because of his political beliefs and that a group of Macoutes were seeking to kill him because he refused to join them." Molaire had twice been taken to the airport to be deported, but cried and begged not be put on a plane for Haiti. He spent more than a month in isolation at INS's Krome detention center and the Metro Correctional Center, and, though out of isolation, was still being secluded from other Haitians at Krome at the time of the decision.

At his hearing, the immigration judge had only asked two questions: "Why did you come to the United States?" and "Okay, so you were coming up here to get a better job and everything. Is that correct?" He told Molaire, "I cannot let you in on someone else's passport and under the law have to order you to go back to Haiti.... Nothing more you say to me will make any difference in my decision."

In response to the decision, a lead editorial in the July 19 Miami Herald charged, "Never has there been any doubt that the Federal Government singles out refugees and would-be immigrants from Haiti for special discriminatory treatment. Never. Local INS officials no longer use the crude language of racism, as some did in the early 1970s, but the attitude is little changed."

Update

- The British and Vietnamese governments have reached an agreement that would allow for the nonvoluntary repatriation of boat people in Hong Kong whose claims to refugee status have been rejected, according to The Washington Post. Following two days of talks in Hanoi that concluded on September 21, officials representing Vietnam, Britain, Hong Kong, and the UN High Commissioner for Refugees (UNHCR) issued a statement saying

that the parties had "agreed to the modalities of repatriating those who, while not volunteering to return, are nevertheless not opposed to going back." UNHCR would play "an active role fully compatible with its humanitarian mandate" in ensuring that there is no force or coercion used on the returnees.

For more than one year, British and Hong Kong officials have been seeking to repatriate Vietnamese boat people who have been rejected for refugee status but who do not volunteer to return to Vietnam. Last December, Hong Kong authorities forcibly repatriated 51 Vietnamese but postponed further efforts following a storm of international protest led by the U.S. government.

This July, Secretary of State James A. Baker 3rd announced a shift in the U.S. position in an effort to preserve the international agreement to resolve the longstanding Vietnamese refugee problem known as the Comprehensive Plan of Action (CPA). "While we continue to oppose involuntary repatriation," Baker said, "we are willing to support UNHCR's suggestion for a new category of returnees--that is 'those who do not object.'

A U.S. official in Hong Kong told The Washington Post that the recent agreement fit "within the parameters of what the United States has agreed to." The official added, "We are still opposed to the use of force."

There are currently 54,341 Vietnamese boat people in Hong Kong, of whom 10,272 have refugee status, 11,294 have been screened out, and 32,775 are awaiting an interview.

° The first breakthrough has been achieved in getting aid to at least some of the 1.9 million people affected by a famine in Angola that has already resulted in the deaths of between 3,800 and 10,000 people.

The government of Angola has agreed to allow the UN and the International Committee of the Red Cross (ICRC) to transport emergency relief supplies through neighboring Namibia directly into UNITA-held areas of southern Angola, where an estimated 150,000 people are said to be at immediate risk. The decision was announced following meetings between Angolan government officials and representatives of the U.S. State Department's Office of Foreign Disaster Assistance (OFDA).

According to a report by members of a Congressional delegation that also visited Angola recently, however, the vast majority of those at risk will remain unassisted unless the Angolan government and UNITA agree to a cease-fire to allow relief to reach at-risk populations living in contested areas. Without a cease-fire, experts estimate that as many as 100,000 to 200,000 people could starve.

° UN High Commissioner for Refugees Thorvald Stoltenberg has asked the United States to end its policy of screening refugees who are seeking resettlement here for the human immunodeficiency virus (HIV).

In a September 10 letter to INS Commissioner Eugene McNary and other administration officials, Stoltenberg reiterated the World Health Organization's unambiguous position that screening does not prevent the introduction or spread of AIDS. He noted that only two of the more than 160,000 Indochinese refugee applicants for U.S. resettlement who were tested for HIV proved to be HIV-positive.

Stoltenberg said that refugees are unable to return to their home countries because it could endanger their lives. Screening and excluding from resettlement those who test positive for HIV not only closes another door for them, it also jeopardizes their right to first asylum "and puts in danger the most basic and inalienable right of refugees: the right to nonrefoulement," Stoltenberg said.

° Liberians are finding it difficult to obtain the "voluntary departure" for which the Immigration and Naturalization Service (INS) said they could apply.

On July 27, the INS announced that it would "view sympathetically" requests for voluntary departure from Liberian nationals in the United States as of that date. According to the Lawyers Committee for Human Rights, however, none of the Liberians whom they know of have had their requests accepted.

The Lawyers Committee identified several problems that Liberians have encountered, including: INS officials are unaware of the program; applicants are being given incorrect or contradictory instructions; applicants are facing delays in receiving employ-

ment authorization.

In an August 31 letter to INS Commissioner Gene McNary, Arthur Helton, the Committee's Refugee Project Director, urged INS to issue clarifications regarding eligibility requirements and application procedures, institute prompt processing of requests for employment authorization, and extend the July 27, 1990 cut-off date for eligibility due to the continuing violence in Liberia.

According to a U.S. State Department official who recently returned from Liberia, the situation of the estimated 100-150,000 civilians who remain trapped in Monrovia is the worst he has witnessed in 20 years of relief work.

"They have been without a water supply for five months, and without food for two months," he said. Children are dying. Cholera and other diseases are rampant. At night, he added, armed hooligans, many--though not all--soldiers belonging to what is left of the army of the late president, Samuel Doe, rape, pillage, and murder at will.

A temporary cease-fire was agreed to on September 22, 1990, and, following meetings in the region with Secretary of State James Baker III, rebel leaders agreed to initial talks on September 28, 1990. The cease-fire accord collapsed within days.

Meetings and Conferences

° The National Network for Immigrant and Refugee Rights is sponsoring a conference on October 27 and 28, on Immigrants Rights: A Civil Rights Issue for the 90s. The conference will be held in Berkeley, California and will include plenaries on HIV/AIDS and immigrant communities, and on employer sanctions. For further information, contact National Network, (415) 465-1984.

Resources

NEW USCR REPORT SAYS DISPLACED SUDANESE IN KHARTOUM IN DANGER OF FORCED REMOVAL

For more than a million displaced southern Sudanese living in and around Khartoum, "life is hell," says a new report by the U.S. Committee for Refugees (USCR). Many of them have fled the war in the south, massacres by government-armed militias, and man-created famine that have left hundreds of thousands dead. Now they are in danger of forcible mass removals from Khartoum and relocation to desert areas, to "production camps" where they can serve as cheap labor, or even to their conflict-ridden home areas.

Khartoum's Displaced Persons: A Decade of Despair guides the reader through the complex world of Khartoum politics, policies, and practices that affect the displaced. It also discusses 1989's UN-coordinated relief effort, Operation Lifeline Sudan (OLS I), as well as this year's OLS II, which has met with considerably less international support and is on the verge of collapse [See Recent Developments].

The report also details the Sudanese government's attempts to remove the displaced southerners from the Khartoum area, and its attempts to seek international funding for the relocations. USCR director Roger P. Winter said, "First the government prevented donors and aid groups from assisting the displaced, despite the fact that it was doing nothing for them itself, and now it seeks to involve the international community in their relocation--not for humanitarian reasons, but because of political and supposed security concerns."

Single copies of Khartoum's Displaced Persons: A Decade of Despair are available free of charge to Refugee Reports subscribers ($3.00 per copy for non-subscribers) from: U.S. Committee for Refugees, 1025 Vermont Ave. N.W., Suite 920, Washington, DC 20005. (202) 347-3507.

LAWYERS COMMITTEE ISSUES ANALYSIS OF ALIEN BLACKLIST

The Lawyers Committee for Human Rights has issued The Alien Blacklist: A Dangerous Legacy of the McCarthy Era, an analysis of the lookout list used by U.S. immigration and consular officials to determine whether foreigners are inadmissible on the basis of the political exclusion provisions of the 1952 McCarran-Walter Act. The list analyzed is a 370-page document with 353,324 entries reflecting the nationalities and dates of listing of affected aliens. Over 2/3 of the

entries on the list have been made since 1980. The list was obtained pursuant to a Freedom of Information Act request made by Arthur C. Helton, a lawyer with the Lawyers Committee, and counsel for Patricia Lara, a Colombian journalist who in October of 1986 was detained upon arrival at Kennedy airport, where she learned that her name was on the lookout list. Ms. Lara, a graduate of the Columbia University's School of Journalism, had flown to New York to attend an awards dinner for "distinguished contributions to the advancement of inter-American understanding and freedom of information." She contends that she was barred from entering as a result of writing articles critical of the Reagan Administration's policies in Central America.

A federal district judge in New York ordered the disclosure of the list in 1989, reasoning that "[t]he public has a great interest in knowing who has been listed in the NAILS [National Automated Immigration Lookout System] Lookout Book on the basis of the 'ideological exclusion provisions' .... These grounds for exclusion and the exclusion process itself affect citizens' constitutional rights, including the rights of free speech and association. Disclosure would protect citizens' rights to analyze and challenge the exclusion of individuals or the Government's reasons for exclusing individuals." The list was compiled by the Immigration and Naturalization Service (INS) in June 1990 and released to the Lawyers Committee.

The Lawyers Committee finds the scope and magnitude of the lookout list "astounding." Of the total entries on the list, 345,273 were made by the State Department, and 6,838 by the INS, including 1,653 concerning Canadians and 2,230 concerning Mexicans.

Calling for significant reforms regarding the lookout list, the Lawyers Committee cites legislation enacted in February of this year prohibiting U.S. authorities from deporting, excluding or denying visas to nonimmigrant aliens due to their past or current political beliefs, statements or associations, which, if engaged in by a U.S. citizen in this country, would be protected by the U.S. Constitution. The Committee's principal recommendation is that the Executive's inter-agency process should purge the list of ancient and unnecessary listing and remove and halt listings for alien visitors under the ideological exclusion provisions of the McCarran-Walter Act. According to Helton, "the lookout list is the dangerous legacy of a discredited era. In a period of diminishing world tensions, barring foreigners from visiting the United States for political reasons is an increasingly anachronistic practice. Substantial reform is necessary to ensure that innocent aliens and American citizens are not victimized in the future."

The Alien Blacklist is available for $25 from the LCHR, 330 Seventh Ave., 10th floor north, New York, NY 10001. (212) 629-6170.

DIRECTORY OF NONPROFIT AGENCIES

The National Immigration Law Center has updated its Directory of Nonprofit Agencies that Assist Persons in Immigration Matters. In addition to an annotated listing of programs that provide free legal assistance to indigent persons in immigration proceedings, the new directory also includes state and national support centers that provide back-up help on immigration law issues.

The directory indicates which agencies are accredited by the Board of Immigration Appeals, as well as those authorized by the INS to provide English language and civics courses to temporary resident aliens.

Agencies are listed by state. Each entry includes the name of a contact person, the type of legal assistance provided, and the languages spoken.

The 137-page directory is available to nonprofit agencies for $5 by contacting the National Immigration Law Center, 1636 West 8th Street, #215, Los Angeles, CA 90017. (213) 487-2531.

Reader Exchange

An opening is available beginning on December 1, 1990, for Director of the Joint Voluntary Agency Representative for Singapore and Indonesia, to be based in Singapore. Please respond as soon as possible to Ms. Pat Schaffel, American Council for Nationalities Service, 95 Madison Avenue, New York, New York 10016. (212) 532-5858.

UNITED STATES CONTRIBUTIONS TO INTERNATIONAL REFUGEE ASSISTANCE PROGRAMS, FY 1989

By International Organization

UNHCR	$120,529,000
UNRWA	63,300,000
ICRC	39,271,000
UNBRO	12,243,000
IOM (Int'l Org. for Migration)	5,400,000
Voluntary Organizations and Bilateral Assistance	34,634,000
TOTAL	$275,377,000

By Targeted Area/Group

Refugees in Africa	
UNHCR	$64,414,000
ICRC	22,476,000
Voluntary/Bilateral	1,944,000
Subtotal	$88,834,000
Refugees in East Asia	
UNHCR	$19,456,000
UNBRO	12,243,000
ICRC	5,824,000
Voluntary/Bilateral	1,289,000
Subtotal	$38,812,000
Refugees in the Western Hemisphere	
UNHCR	$ 9,810,000
ICRC	1,746,000
Voluntary/Bilateral	320,000
Subtotal	$11,876,000
Refugees in Near East, South Asia, and North Africa	
ICRC	$ 2,025,000
UNRWA	63,300,000
UNHCR	26,849,000
Voluntary/Bilateral	3,081,000
Subtotal	$95,255,000
Refugees in Israel	
UIA (United Israel Appeal)	$28,000,000
Subtotal	$28,000,000
Contributions to Worldwide Programs	
ICRC	$ 7,200,000
IOM	5,400,000
Subtotal	$12,600,000
TOTAL	$275,377,000

Source: United States Department of State, World Refugee Report.

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